

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-219345.3 DATE: September 5, 1985

MATTER OF: LaBarge Products

## DIGEST:

1. Where protester raises broad ground of protest in initial submission but fails to provide any detail on this protest ground until it comments on the agency report, so that a further response from the agency would be needed for an objective review of the matter, the protest, filed in a piecemeal fashion, will not be considered.
2. A protester alleging disclosure of its confidential information to its competitors by agency personnel bears the burden of proving the improper conduct, and absent any probative evidence of actual disclosure, the allegation must be viewed as speculative and the burden has not been met. Moreover, GAO will not conduct investigations to establish the validity of the protester's statements.
3. GAO has no authority to determine what information must be disclosed by another agency in response to a Freedom of Information Act request.

LaBarge Products (LaBarge) protests the award of any contract under invitation for bids (IFB) No. DAAJ10-85-B-A089 issued by the Army for the procurement of a minimum of 20 and a maximum of 62 tactical water distribution sets and spare/repair parts. LaBarge asserts that it submitted the only responsive bid, and that the Army released confidential information to certain other bidders. We dismiss the protest in part and deny it in part.

The IFB was issued on March 29, 1985, and bid opening was on May 28. Of the five bids received, Engineered Air Systems, Inc. (EASI) was low bidder; Angus Fire Armour Corp. (Angus) was second low; and LaBarge was third. LaBarge protested to our Office on June 28.

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The Army, in reporting on LaBarge's protest, states that all five bidders were responsive to the solicitation. The agency also contends there was no disclosure of confidential data to bidders by any procurement personnel. Any changes to the solicitation, the Army states, were issued by amendment, and any answers to questions concerning the solicitation were circulated to all bidders. Finally, the Army argues that LaBarge has failed to present any specific evidence of the alleged disclosure of confidential information.

In its response to the agency report, LaBarge argues that neither EASI nor Angus provided an overpack list for the pump and engine they offered in their bids, as required by Amendment 3 to the solicitation. Such failure, LaBarge contends, amounts to a material bidding deficiency and warrants a finding of nonresponsiveness by our Office. Further, LaBarge believes its confidential pricing information is being released to its competitors by Army personnel. The firm cites, to support its position, a protest which we dismissed earlier this year, Victaulic Company of America, B-217129, May 6, 1985, 85-1 C.P.D. ¶ 500, involving another contract with the Army; many of the same Army personnel, according to LaBarge; and an allegation that pricing data was disclosed improperly. Apparently, LaBarge is suggesting that the disclosure allegation in Victaulic supports LaBarge's allegation in this case. LaBarge informs us of an investigation of the alleged activity in the Victaulic procurement that is being conducted by the Army Criminal Investigation Division (CID), and states that it has sought information concerning this investigation pursuant to the Freedom of Information Act (FOIA). Because it has received no response, LaBarge asks that our Office investigate the allegations independently.

We will not review LaBarge's responsiveness argument as it was detailed insufficiently as initially filed and, as a piecemeal presentation, is untimely. In its initial protest submission, LaBarge failed to indicate why it thought it was the only responsive bidder, or how the other bidders were nonresponsive. Thus, the firm failed to comply with section 21.1(c)(4) of our Bid Protest Regulations, which requires a protest to include "a detailed statement of the legal and factual grounds of protest including copies of relevant documents." Datametrics Corp., B-219617, Aug. 1, 1985, 85-2 C.P.D. ¶ \_\_\_\_.

In its comments on the agency report LaBarge, for the first time, presented specific details on this issue by raising EASI's and Angus' failures to provide overpack lists. We will not review the merits of the specifics noted in LaBarge's comments, however.

The protest system endorsed by the Competition in Contracting Act of 1984 (CICA), implemented by our Regulations, is designed to provide for the expeditious resolution of protests with only minimal disruption to the orderly process of government procurement. See 31 U.S.C. § 3554 (West Supp. 1985). To that end, CICA requires, generally, the agency to withhold contract award or, if a contract was awarded within 10 days prior to protest, to direct the contractor to cease performance while the protest is pending. The agency is required to report within 25 working days from its receipt of notice of the protest from our Office, 31 U.S.C. § 3553, and the protest must be resolved by our Office within 90 working days. 31 U.S.C. § 3554. This process does not contemplate a piecemeal development of protest issues, since that would enable a protester to delay our decision and jeopardize our ability to meet the CICA requirement for a decision within 90 days, thereby undermining the objectives of the process by delaying an award that otherwise could have been effected earlier. Protesters therefore must assert and substantiate all of their grounds of protest as promptly as possible, and a failure to do so may result in portions of a protest being dismissed. 4 C.F.R. § 21.1(f).

It is clear from LaBarge's comments that the basis for the initial assertion that LaBarge was the only responsive bidder was that the other bidders did not include overpack lists. Yet LaBarge withheld this argument until the Army, absent any detail from LaBarge, made a general response. As a result, we are left with a protest that was not substantiated until after the agency response, leaving us with no basis for objective review absent a supplemental report from the agency. We therefore will not consider this protest ground.

LaBarge's protest that its confidential information is being released to its competitors by Army personnel is denied. The protester has the burden of proving improper conduct on the part of government officials. See Davey Compressor Co., B-215028, Nov. 30, 1984, 84-2 C.P.D. ¶ 589.

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Absent any probative evidence of the actual disclosure, the allegation must be viewed as speculative only, because the protester's burden would not be met. See Energy and Resource Consultants, Inc., B-205636, Sept. 22, 1982, 82-2 C.P.D. ¶ 258. Here, LaBarge provides nothing more than its belief that information is being released based on the protest submission in Victaulic. Without probative evidence, LaBarge's allegations do not provide a basis for our Office to object to the award. Id.

Moreover, our Office will not conduct investigations to establish the validity of a protester's speculative statements. Lion Brothers Company, Inc., B-212960, Dec. 20, 1983, 84-1 C.P.D. ¶ 7. As to the protester's FOIA request to the Army, we point out that we do not have authority to determine what information must be disclosed by another agency in response to a FOIA request. A firm's recourse in this respect is to pursue the disclosure remedies under the procedures provided by the statute itself. Id.

The protest is dismissed in part and denied in part.

*for Seymour E. Epps*  
Harry R. Van Cleve  
General Counsel